

AMTA

American Mobile Telecommunications Association

EX-101 FILE COPY ORIGINAL

PRESIDENT & CEO

Alan R. Shark, CAE

EX PARTE OR LATE FILED

GENERAL COUNSEL

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez

December 23, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

via Hand Delivery


William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Notice of written *ex parte* presentation
800 MHz SMR Licensing
PR Docket No. 93-144

Dear Mr. Caton:

On December 23, 1996, the American Mobile Telecommunications Association, Inc. (AMTA) submitted a written *ex parte* presentation on behalf of the 800 MHz consensus parties concerning the above-captioned docket to Catherine Sandoval, Director of the FCC's Office of Communications Business Opportunities, and Deputy Director Eric Jensen. The materials included letters of support for the 800 MHz SMR industry consensus plan from members of Congress and a discussion of issues related to the position prepared by the consensus parties. A copy of the materials is attached to this Notice.

Pursuant to Section 1.1206 of the Commission's Rules and Regulations, an original and one copy of this Notice have been submitted, with enclosures.


Jill M. Lyon
Dir of Regulatory Relations

Enclosure

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Questions Concerning the 800 MHz Industry Consensus Plan

Since the negotiation among industry participants which led to the filing of Joint Comments and the 800 MHz industry consensus plan, many questions have been asked concerning possible ramifications to the industry, the FCC, potential new 800 MHz entrants and the public. The following dialogue is an effort to answer these questions.

1. Why should the FCC implement a proposal that serves to delay and/or avoid an auction of 800 MHz spectrum?

The industry consensus proposal meets several important needs of both the FCC and the SMR industry. As such, the consensus parties believe this is a "win-win" opportunity to end a protracted dispute over this heavily encumbered, long-licensed spectrum.

To begin, the consensus plan would not avoid an auction of either the upper 200 channels or the lower 230 800 MHz SMR channels. In fact, the parties hope that the auction of the upper 200 channels would take place as soon as possible following implementation of new rules, since the plan assumes that the upper band auction will be completed before final licensing or auctioning of all lower band channels. Consensus parties, including most of the 800 MHz industry, have conditioned their

support for the upper-band auction and retuning/relocation on the FCC's implementation of the plan. The pre-auction "channel swap" negotiations now underway among incumbents, post-auction retuning/relocation from upper band channels and the EA settlement process are closely intertwined -- they cannot successfully progress piecemeal.

Following the end of the first auction, in accordance with the rules announced in December, 1995, EA licensees would notify those incumbent licensees they plan to retune/relocate from the upper 200 channels within their newly-licensed blocks. Implementation of the consensus plan provides a strong incentive to accelerate voluntary negotiation of those relocations both before and after the upper-band auction, since the EA settlement process provides the only opportunity for displaced incumbents to gain some measure of enhanced flexibility for their systems on their "new" channels.

The consensus parties contemplate that EA settlements will be completed and the resulting applications to the Commission will be filed during a pre-determined period. Thus, auction of remaining lower-band channels would not be delayed significantly.

2. What benefits to small businesses arise from the consensus

proposal?

As the consensus parties have repeatedly outlined, the proposal provides significant benefits to truly small businesses. Surveys have revealed that most incumbent SMR businesses, and almost all that will be retuned/relocated from the upper channels, have gross revenues of less than three million dollars per year. The plan also benefits the hundreds of private licensees, many of which also are very small businesses, now holding authorizations to operate on formerly General Category channels.

The FCC has recognized its congressional mandate to consider the impact of its regulations on small businesses. Incumbent, small business SMR licensees, many of which have been serving local communities for fifteen years or more, have been unable to expand their systems through licensing of additional channels, or even *de minimis* geographic expansion, for between 14 months and nearly 2 1/2 years. While their ability to expand their service coverage is inherently limited because of the heavily encumbered status of these channels in all but the most rural areas, these licensees, nonetheless, are eager to respond to pent-up customer demand for improved coverage to the extent even minimal expansion opportunities are available.

However, the consensus plan provides no free lunch for small businesses. While the EA settlement

proposal may allow some nominal, long-needed growth in service areas, it requires that all licensees on each frequency, both commercial and private, successfully work together. The plan contemplates only one application per channel in each EA. Given the substantial number of existing licensees on these channels, this will often require successful negotiation among several parties, especially after the retuning/relocation of upper-200 operators to the lower band.

3. Wouldn't partitioning and disaggregation flexibility in the 800 MHz upper band or in other frequency bands provide adequately for small businesses?

No. Flexible partitioning and disaggregation of geographic-area licenses does speed the provision of service to less-developed areas, since auction winners often concentrate their initial construction efforts in urban areas. However, it is *not* an effective means of satisfying the FCC's obligations to small businesses in general and is especially ineffective for incumbent licensees in this frequency band.

The likelihood is great that geographic-area licensees in any service will make only their least-desirable geography available to a partitionee. Should the Commission rely on partitioning for small business relief, this guarantees that small business would be relegated to the least-

desirable areas of the country. It is a generally unacceptable outcome, and especially so to incumbent urban licensees, which would be unable to obtain additional spectrum in their existing service areas.

The small amount of spectrum contemplated for SMR auction blocks makes it unlikely that EA licensees will readily offer disaggregated spectrum. Thus, partitioning and disaggregation are not acceptable means for the discharge of the Commission's obligations.

4. How do 800 MHz subscribers benefit from this plan?

The long freeze on 800 MHz licensing has led to situations all over the country, in both urban and rural settings, in which existing operators are unable to add a single new user to their systems. In some cases, there is not even sufficient room to accommodate the expanded fleets of existing subscribers. Prospective customers have been forced to opt for cellular service (or PCS, where available) which may not meet their dispatch-oriented needs, or to obtain their own private-system licenses. These alternatives typically are more expensive or of lower service quality than SMR service.

The freezes, coupled with uncertainty concerning regulation of the industry, has also led to less technological development. Manufacturers have been hesitant to introduce new features in a period of

low equipment sales, and equipment prices have remained higher than may otherwise have occurred due to lower demand. Such costs must be passed on to users.

Implementation of the consensus plan ends the long period of uncertainty with a licensing framework that, while less than perfect, is supported by the large majority of the industry. With the auction of the upper-band channels, tied closely to more rapid migration and an equitable solution for lower-band operators, the entire industry can move forward once more in serving customers, both through traditional SMR service and in the implementation of advanced networks. Customers are the primary benefactors from a more readily available, efficient and less-costly communications service.

5. Doesn't the consensus plan limit opportunities for new entrants into the 800 MHz SMR industry?

The consensus plan has little, if any, impact on the availability of spectrum to new entrants in the 800 MHz band.

With the reallocation of the 150 General Category channels to the SMR service, this band *totals* 430 channel pairs, less spectrum than is held by each of two cellular licensees in every market. This spectrum is already shared by thousands of licensees. Research by the consensus parties shows that none of these channels is

clear throughout the country. Indeed, many are occupied so extensively nationwide that they would offer no meaningful opportunity for a viable commercial system.

The Commission has implemented rules that provide for retuning/relocation of upper-band systems to other channels, and has crafted auction rules that provide eligibility for all entities interested in participating. The consensus parties submit that these measures provide the best opportunity for new entrants in the 800 MHz SMR band; the heavily encumbered nature of the band otherwise provides little opportunity for enough "clear" spectrum blocks to create viable systems.

Especially after the retuning/relocation process, the lower-band channels, with their thousands of systems entitled to interference protection, will have little, if any, value to a new entrant regardless of the rules adopted for the lower channels. However, the consensus plan does provide for auction of unoccupied channels, or those on which incumbents cannot come to agreement.

6. Wouldn't implementation of the consensus plan create a precedent for other FCC proceedings, particularly that concerning the paging services?

SMR spectrum and the SMR proceeding are unique in several respects, and different enough from the

state of the paging industry that no binding precedent need be assumed.

First, the 800 MHz industry consensus plan proposes a solution for heavily-congested channels that will house many systems that have been retuned/relocated from other parts of the band. The FCC has not proposed mandatory retuning/relocation for incumbent paging operators.

Second, the SMR industry has come to its present condition after a long licensing freeze that has halted expansion for many service providers, and even curtailed the ability to modify existing facilities. In contrast, the paging industry has shown tremendous growth over recent years. The paging "freeze" has existed for less than a year and includes a provision that permits incumbent operators to continue to add stations within forty miles of all their licensed, operational facilities. Thus, paging operators have not been denied an opportunity to pursue expansion plans that SMR providers are now requesting.

7. Is there a reasonable alternative to the consensus plan?

The consensus parties know of no alternative to the industry plan that would not be administratively burdensome for the Commission or inequitable to licensees.

The 230 channels of the lower 800 MHz band are licensed in a widely varying manner. In addition, the FCC database shows that there is no "white

space" between licensed stations in any population center suitable for creation of a viable system by a non-incumbent successful bidder. The consensus plan puts the burden of determining the location of all systems on the shoulders of the industry through the EA settlement process. It also provides an incentive for EA licensees and incumbents to come to agreement quickly on swapping upper for lower band operations, where site-based licensing is rarely identical.

The FCC is already familiar with the complexity of PCS/microwave relocation, a process that involved far fewer systems than operate in the 800 MHz band, systems used only for internal, not commercial communications, and systems that were not owned by business competitors. The consensus plan provides a tangible incentive for incumbents to relocate voluntarily and expeditiously, without the need for FCC involvement.

Further, nowhere else has the FCC proposed to hold an auction of spectrum that serves as the new home for licensees displaced by a previous auction. Such an inequitable prospect would result in a *second* occasion in which these licensees would be prevented from expanding their businesses.

8. What other action do the consensus parties contemplate in support of the plan?

With the return of members of Congress to Washington following November elections, the consensus parties expect to garner more support for their proposal in both the U.S. House of Representatives and the Senate. As the Commission is aware, 23 members of the House telecommunications subcommittee, from both political parties, signed a letter in support of the plan just prior to the close of Congress. Other letters of support have come from Senate Majority Leader Trent Lott (R-Miss.) and Senate communications subcommittee chairman Conrad Burns (R-Mont.). Given the benefits of the plan to small businesses and the fact that it meets the congressional mandate of avoiding mutually exclusive applications in an existing service, the parties are confident that additional support will be forthcoming.

Consensus parties are aware that a small number of SMR licensees has linked together to form a group that promises a court challenge to 800 MHz spectrum auctions. The parties do not contemplate joining any such action at this time.

9. If the consensus proposal is not unanimously supported, why is the agreement important?

As the Commission is aware, this proposal represents resolution of severe disagreement among segments of the SMR industry that lasted for many months. Moreover, it is an example of

industry consensus on difficult issues such has been requested by the FCC itself.

Given the amount of contention over the imposition of geographic-area licensing and auctions on a heavily-licensed frequency band, unanimous support of any plan is impossible. As stated at the beginning of this document, the consensus parties believe the proposal offers the best alternative for an industry seeking to continue its tradition of service to the public and regain a competitive status, for the FCC in enhancing competition and providing valuable services to the public, and for new entrants seeking the best opportunities for 800 MHz spectrum. The consensus plan is a win-win proposal. We urge the Commission to show support for the industry's efforts by implementing this consensus.

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TO KALISPELL D. O.

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CONRAD BURNS
MONTANA

United States Senate

WASHINGTON, DC 20510-2001
(202) 224-2044

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September 5, 1996

Honorable Reed F. Hundt
Chairman
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20544

Dear Mr. Hundt:

Your response on July 24, 1996, to my concerns regarding the Commission's pending rulemaking on paging (WT Docket No. 96-18) and 800 Mhz Specialized Mobile Radio (SMR) (PR Docket 93-144) is appreciated.

As the SMR and paging industries prepare for the changing regulations that will determine the future of their business, I must reiterate my belief that the wholesale auctioning of substantially licensed spectrum must be questioned.

The Wireless Bureau of the FCC requested that the SMR industry create a solution for the difficulties that have, to date, stalled the rulemaking in 800 Mhz. I have been informed that the American Mobile Telecommunications Association (AMTA), the specialized Mobile Radio Wireless Operator Network (SMR WON), the Personal Communications Industry Association (PCIA), and Nextel Communications, Inc., have reached a compromise that satisfies wide area and incumbent operators alike.

The SMR and paging industries were created by entrepreneurs who provided jobs, service, and business opportunities throughout communities in rural and metropolitan America. I have been contacted by a number of my constituents who have expressed fear for the future of their businesses and who have complained that their businesses have been devalued as a result of the FCC's failure to grant their license applications.

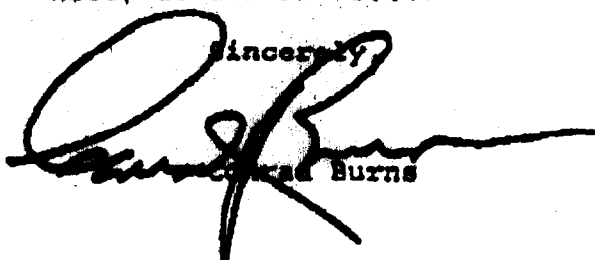
I believe that it is in both the public's interest and the industry's interest for this rulemaking to be expeditiously resolved. Consequently, I support the industry consensus proposal at 800 Mhz -- a proposal that is supported by over two-thirds of the industry. Because the industry has delivered a solution at 800 Mhz, I urge the FCC to adopt this proposal.

10-10-96 15:39ZK

TO KALISPELL D.C.

9006-000

Thank you for your continued attention to this matter.
Should you have any questions, please feel free to contact Brett
Scott, my General Counsel, at 202-224-2644.

Sincerely,

Andrew Burns

Michels

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U.S. House of Representatives
Committee on Commerce

Room 2125, Northern House Office Building
Washington, DC 20515-6115

September 27, 1996

JAMES E. DERGOURIAN, CHIEF OF STAFF

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Dear Chairman Hundt:

We are writing with respect to the Commission's proceeding in PR Docket No. 93-144 establishing new geographic area-based licensing rules for 800 MHz specialized mobile radio (SMR) systems. As you know, this proceeding was mandated by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). We urge the Commission to complete this proceeding promptly and end more than two years of regulatory uncertainty for the SMR industry.

The current licensing freeze imposed by the Commission pending its completion of this proceeding has caused significant hardship to many SMR operators, and has resulted in a general stagnating effect on the industry as a whole. Many of us have encouraged the industry to reach consensus on the many difficult issues relating to this proceeding in a way that is fair to all, and provides each with the ability to expand its business and compete effectively.

We understand that representatives of the SMR industry (AMTA, PCIA, SMR WON, and Nexiel) have submitted an "Industry Consensus" proposal to the Commission for your consideration. This proposal would permit incumbent licensees to obtain geographic area licenses on the lower 230 SMR channels via settlements, joint ventures, and frequency swaps. A summary of the proposal is attached.

We believe that the "Industry Consensus" is consistent with the Congressional directive contained in OBRA '93. In that law, we stipulated that auctions should be used only when mutually exclusive applications for an initial license can not be avoided by other means, such as sharing and employing engineering techniques. Furthermore, we are aware that more than one-third of the current licenses issued within the 150 General Category channels are for private, non-SMR operations. It was the intent of Congress that the manner in which these licenses are issued should

The Honorable Reed E. Hundt
 September 27, 1996
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not be affected by the auction authority granted in OBRA '93. [Conference Report accompanying OBRA '93, p. 253.]

We urge the Commission to adopt the principles outlined in the "Industry Consensus," while also continuing to license private, non-SMR users in the manner contemplated by the 1993 Budget Act. We believe the industry proposal would promote the introduction of new competitive wireless services, while simplifying the SMR licensing process and reducing the Commission's administrative licensing burden.

We appreciate your attention to this important matter.

Sincerely,

Jon Bliley

Jack Fields

Mark D. Okey

Billy Tauzin

Don Scaup

Erick L. Engel

Jim Cox

John A. H. [unclear]

Co. M. [unclear]

Gov. G. [unclear]

Hon. K. [unclear]

Billy [unclear]

Don [unclear]

Julia [unclear]

The Honorable Reed E. Hundt
September 27, 1996
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4100 Wilshire Blvd.

Los Angeles, CA 90048

Honorable J. Blumenthal
Chairman
Federal Communications Commission
1919 N Street, N.W., Room 505
Washington, DC 20554

Dear Chairman Blumenthal:

I am taking the liberty of contacting you further on behalf of my constituents who are interested in the FCC PR Docket No. 93-144, for specialized mobile radios (SMR). As you recall, I corresponded with you earlier on this matter. However, I have recently received another inquiry regarding the situation.

I have followed with interest the Commission's proceeding in this Docket, as mandated by the Omnibus Budget Reconciliation Act of 1993, establishing new geographic area-based licensing rules for 800 MHz systems. Our office has been contacted by numerous SMR providers urging the Commission to rapidly complete and end more than two years of regulatory uncertainty and resultant industry stagnation.

Throughout the proceeding, my office has encouraged SMR industry to come together to resolve difficult issues in ways that promote competition by giving all SMR licensees, both large and small, opportunities to grow and expand their businesses. The Commission has also encouraged industry participants to reach consensus on these issues. Attached is a paper with details on the 800 MHz SMR Industry Consensus proposal. Please give this Consensus Proposal every possible consideration. Finally, I would sincerely appreciate your providing me a status report.

Again, thank you very much for your time and continued assistance. With kind regards and very best wishes, I remain

Sincerely yours,

Trent Lott

Trent Lott

TL:fbr

Enclosure